Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	
Compensation Regime	)	CC Docket No. 01-92
	)	
Sprint Petition for Declaratory Ruling	)	
Regarding the Routing and Rating of Traffic	)	
By ILECs	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC") submits these Reply Comments pursuant to the Public Notice (DA 02-1740) released in this proceeding on July 18, 2002.

The comments submitted by various parties confirm that the underlying dispute between Sprint and BellSouth raises issues concerning the rights of carriers under current Commission rules with respect to the provision of indirect interconnection and transit services. In response, the Commission should determine that under the Act and under its rules, carriers are not required to provide indirect interconnection or transit services. The Commission also should determine that, if a carrier chooses to provide transit services, it is not required to price those services at TELRIC.

AT&T and other carriers assert that ILECs are required by the Act to provide tandem transit services at TELRIC-based rates.[1] The Act contains no such requirement. As a preliminary matter, there are no provisions in the Act or in the Commission's rules specifically addressing, let alone requiring, the provision of transit services. Rather, AT&T and others have read into the Act such a requirement based on the Act's interconnection provisions, specifically, 47 U.S.C. § 251(a)(1) and 47 U.S.C. § 251(c)(2)(A). Neither provision supports the claim that the Act requires ILECs to provide tandem transit services at TELRIC rates.

Section 251(c)(2)(A) imposes on ILECs the duty:

> to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access.

AT&T paraphrases the first portion of this provision and then pairs its paraphrase with the final portion of the provision to conclude that Section 251(c)(2)(A) requires ILECs to provide tandem transit services. AT&T thus interprets Section 251(c)(2)(A) to suggest that it is not limited "solely to traffic between the incumbent LEC and the requesting carrier."[2] Therefore, according to AT&T, ILECs are required to provide tandem transit services. Even a casual reading of the actual words of the entire provision, however, reveals that AT&T is wrong.

AT&T's suggestion that the phrase "for the transmission and routing of telephone exchange service and exchange access" creates an obligation unto itself to provide transit service is clearly a misreading of Section 251(c)(2)(A). Contrary to AT&T's suggestion, an ILEC's obligation under Section 251(c)(2)(A) is not a broad obligation to facilitate any and all transmission and routing of telephone exchange service and exchange access for interconnection

[1] *AT&T Comments* at 3; *see also American Association of Paging Carriers Comments* at 4-5; *Nextel Comments* at 3, 6; *Voicestream Comments* at 2.

between any carriers' networks. An ILEC's obligation under Section 251(c)(2)(A) is "to provide interconnection." The ***purpose*** for which that interconnection must be used—by a requesting carrier with its facilities and equipment—is "for the transmission and routing of telephone exchange service and exchange access." The transmission and routing of telephone exchange service and exchange access is thus not a separate, standalone obligation under Section 251(c)(2)(A). Indeed, it is not an obligation at all. It is a limitation—reflecting the purpose for which the requesting carrier must use interconnection—on the ILEC's obligation to provide interconnection.

Moreover, AT&T is incorrect that the obligation under Section 251(c)(2)(A) is not limited to traffic between the requesting carrier and the ILEC. The interconnection that must be provided under Section 251(c)(2)(A) is interconnection (1) "for the facilities and equipment of any requesting telecommunications carrier," (2) "with an ILEC's network." It is thus very clear that Section 251(c)(2)(A) is an obligation to interconnect the requesting carrier's facilities ***with the ILEC's network***. It is not an obligation to interconnect a requesting carrier's facilities with another carrier's network, *i.e.*, to provide indirect interconnection and become a third party provider of transit services. Therefore, Section 251(c)(2)(A) creates no obligation to provide transit services.

The Commission has interpreted Section 251(c)(2)(A) similarly. Thus, the Commission was clear in its *Local Competition Order*[3] that the "interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points

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[2] *AT&T Comments* at 3.

[3] First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Radio Service Providers,* CC Docket Nos. 96-98, 95-185, FCC 96-325 ¶ 199 (Aug. 8, 1996)("Local Competition Order")

at which to ***exchange traffic with incumbent LECs***."[4] The Commission further clarified that "the term 'interconnection' under section 251(c)(2)(A) refers only to the physical linking of ***two networks for the mutual exchange of traffic***."[5] Moreover, the Commission said that Section 251(c)(2)(A) gives competing carriers "the right to deliver traffic ***terminating on an incumbent LEC's network*** at any feasible point on that network."[6] It also said that Section 251(c)(2)(A) "requires an incumbent LEC to provide interconnection ***between its network and that of a requesting carrier*** at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party."[7]

The Commission has thus appropriately interpreted the term "interconnection" as used in Section 251(c)(2)(A) to require interconnection between the requesting carrier's facilities and equipment and the ILEC's network for the purposes of exchanging traffic between the two networks. The Commission has never interpreted Section 251(c)(2)(A) to impose any broader interconnection obligations on ILECs to facilitate interconnection between other carriers. To prevent further misinterpretations, the Commission should affirm in this proceeding that the obligation under Section 251(c)(2)(A) does not require ILECs to facilitate indirect interconnection between requesting carriers and other carriers.

AT&T says that in the *Virginia Arbitration Order*[8] the Wireline Competition Bureau (the "Bureau") "declined to determine" whether Section 251(c)(2)(A) requires ILECs to provide

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[4] *Local Competition Order* ¶ 172 (emphasis added).

[5] *Id.* ¶ 176 (emphasis added).

[6] *Id.* ¶ 209 (emphasis added).

[7] *Id*. ¶ 224 (emphasis added).

[8] Memorandum Opinion and Order, *Petitions of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation*

transit services. AT&T is incorrect. Rather, the Bureau declined to determine, "for the first time," that Section 251(c)(2)(A) requires ILECs to provide transit services. The Bureau thus specifically found that there is no "clear Commission precedent or rules declaring such a duty."[9] In short, the Bureau has determined that there is no requirement to provide transit services under Section 251(c)(2)(A). The Commission should affirm the Bureau's determination on this issue.

AT&T and other carriers also make passing reference to Section 251(a)(1) in suggesting that the Act requires ILECs to provide transit services.[10] No such duty is found in Section 251(a)(1). Rather, Section 251(a)(1) requires originating and terminating carriers (*e.g.*, Sprint and Northeast) to interconnect directly or indirectly with one another. In effect, it thus prohibits terminating carriers from refusing interconnection, whether achieved by direct or indirect interconnection, at the request of an originating carrier. It does not require any third party carrier to facilitate indirect interconnection between other carriers.

As with Section 251(c)(2)(A), the Bureau did not determine in its *Virginia Arbitration Order* that carriers have a duty under Section 251(a)(1) to facilitate indirect interconnection and thus provide transit services. Rather, the Bureau merely said that any duty a carrier "may have" under Section 251(a)(1) to provide transit services "would not require that service to be priced at TELRIC."[11] The Bureau thus passed on the question of whether carriers have a duty under

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Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration, et. al., CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731 (July 17, 2002)("Virginia Arbitration Order").

[9] *Virginia Arbitration Order* ¶ 117.

[10] *AT&T Comments* at 4; *Allied National Paging Association Comments* at 5; *Dobson Communications Comments* at 6-7.

[11] *Virginia Arbitration Order* ¶ 117.

Section 251(a)(1) to provide transit services, but it ruled affirmatively that Section 251(a)(1) does not require such services to be priced at TELRIC.[12]

In short, no provision of the Act requires ILECs to provide transit services. Nor is there any Commission rule requiring ILECs to provide transit services. The Commission should, therefore, affirm that ILECs are under no current obligation to provide transit services.[13] Moreover, because the Act contains no obligation to provide transit services, the Commission should not adopt any new rule requiring carriers to provide such services.

The comments in this proceeding demonstrate that there are sound policy reasons for not imposing any legal obligation on carriers to become middlemen providers of transit services to

[12] Dobson and Arch Wireless suggest that the Bureau found such a duty when it determined that Verizon could not unilaterally terminate transit services that it had agreed to provide. *Dobson Comments* at 7; *Arch Wireless Comments* at 12. Dobson misreads the Bureau's decision. The Bureau did not require Verizon to provide transit services. It merely held that, having agreed to provide them, Verizon could not unilaterally terminate those services "abruptly with no transition period or consideration of whether WorldCom has an available alternative." *Virginia Arbitration Order* ¶ 118. Indeed, the dispute before the Bureau was the protection and solidification of transit service already being provided to AT&T and WorldCom, not the creation of an obligation upon Verizon to provide such services to AT&T or WorldCom in the first instance. Moreover, the Bureau adopted language that allows Verizon to terminate its transit services to AT&T and WorldCom, but allowing AT&T and WorldCom sufficient time to seek direct interconnection with the relevant terminating carrier. *Virginia Arbitration Order* ¶¶ 116, 118.

[13] Relying upon the *Virginia Arbitration Order*, AT&T also suggests that it could obtain transit services by ordering a combination of transport and tandem switching UNEs. That was not, however, the finding of the Bureau. Rather, the Bureau held that in terminating its transit services, Verizon could not interfere with AT&T's or WorldCom's rights to access UNEs. *Virginia Arbitration Order* ¶ 121. It did not find that AT&T or WorldCom could order a combination of UNEs to obtain transit service from Verizon. Moreover, neither the interconnection facilities between an RBOC (*e.g.*, BellSouth) and a requesting carrier (*e.g.*, Sprint) or between the RBOC and the terminating carrier (*e.g.*, Northeast) would meet the definition of shared transport under 47 C.F.R. § 319(d)(1)(iii) because they would not be "in the incumbent LEC network." Moreover, because RBOCs typically have meet point arrangements with independent LECs, and thus do not have facilities that terminate at the independent LECs' wire centers, carriers would not be able to purchase UNEs running from the RBOC tandem to the independent ILEC wire centers. AT&T thus could not purchase a UNE combination including dedicated transport to replicate the entire suite of facilities used by an RBOC to provide transit services. More fundamentally, even if available, a UNE combination would require AT&T to purchase dedicated facilities, and thus would not produce the "same result" as transit services purchased by AT&T from the RBOC.

other carriers. The Act establishes a framework in which originating carriers pay intercarrier compensation to terminating carriers. The CMRS carriers thus agree that they are responsible for paying terminating carriers (*e.g.*, Northeast) for transporting and terminating calls originated by CMRS customers, and for paying the transit provider (*e.g.,* BellSouth) for its services.[14] The CMRS carriers, however, do not offer to accept responsibility for negotiating a transport and termination agreement with terminating carriers (*e.g.*, Northeast) as part of their asserted entitlement to transit services, or for ensuring that a terminating carrier does not send traffic in the other direction (to be terminated by the CMRS carrier) without compensating the transit provider for its service. Nor do the CMRS carriers address the question of how they would identify transit traffic destined for the terminating carrier so that the terminating carrier knows to bill the originating carrier for such traffic rather than the transit provider.[15]

Independent rural ILEC carriers, moreover, have a different view as to the responsibility for transport and termination charges. While they "take no issue" with Sprint's right to interconnect with them indirectly, they assert that the middleman carrier that delivers transit traffic to them (*e.g.*, BellSouth) is responsible for transport and termination charges.[16] The independent rural ILEC carriers would thus charge the transit provider to terminate calls originated by another carrier's customers, and they specifically request that transit providers

[14] *See, e.g., Allied National Paging Association Comments* at 15; *Dobson Communications Comments* at i, 18. It is unclear whether Nextel intends to include transit traffic in its bill and keep proposal. *See Nextel Comments* at 8-9. Bill and keep, however, is wholly inappropriate for transit traffic arrangements, in which the transit provider is a middleman between the originating and terminating carriers and has no relationship with end user customers.

[15] *See, e.g.*, *National Telecommunications Cooperative Association Comments* (addressing the "unidentified tandem traffic" problem).

[16] *Independent Rural Carrier Comments* at 3.

cannot "escape responsibility" for transport and termination services.[17] The independent rural ILEC carriers would thus ignore the fundamental statutory framework for intercarrier compensation, that the originating carrier compensates the terminating carrier for transporting and terminating a call.[18]

Moreover, the independent rural ILEC carriers claim that they have no responsibility for calls that travel outside their network.[19] Presumably, this means that when Sprint purchases transit services from BellSouth to send traffic to the independent rural ILEC carriers, and the rural independent ILEC carriers use that same indirect interconnection to send their traffic to Sprint, the rural independent ILEC carriers will not pay BellSouth for its provision of transit services because the rural independent ILEC carriers are sending traffic "outside their networks." Thus, while rural independent ILEC carriers may have no obligation to use transit services to send their traffic to Sprint, it appears that they may assert an ability to do so without having to pay for those services, based on the argument that transit traffic travels outside their networks. BellSouth would thus be left uncompensated for traffic originated by the rural independent ILEC carriers.[20]

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[17] *Id.* at 3-4.

[18] Presumably, although unstated, these rural independent ILEC carriers would try to charge the RBOCs interexchange terminating access charges, rather than the reciprocal compensation rates established intraMTA CMRS calls. It should come as no surprise that interexchange terminating access charges are generally much higher than reciprocal compensation rates.

[19] *See, e.g., Independent Rural Carrier Comments* at 5*; Comments of Fred Williamson and Associates* at 4.

[20] In that situation, Sprint and other CMRS providers will not pay BellSouth for providing transit services to transport originating independent rural ILEC traffic to Sprint for termination. *See, e.g., Nextel Comments* at 7; *Small Business in Communications Comments* at 6-7; *Dobson Comments* at 16.

In short, it would be unlawful as well as manifestly unfair to impose an obligation requiring RBOCs to be the middlemen providers of transit services. Simply reading the CMRS and independent ILEC comments in this proceeding demonstrates the hardships such a requirement would impose in trying to force RBOCs to be the intermediary between other carriers whose interests are not aligned.[21] Moreover, requiring RBOCs to become middlemen providers of transit services would subject the RBOCs to substantial risks of having to provide services without any mechanism for being compensated for those services. While an RBOC may decide for itself that it is worth that risk and thus decide to offer transit services as a commercial product, the Commission should not construct a legal requirement under the Act that forces the RBOCs to incur such risks.[22]

[21] *See, e.g., Virginia Arbitration Order* ¶ 119 (rejecting WorldCom proposal that Verizon become a billing intermediary or clearinghouse when it provides transit services).

[22] Moreover, while a carrier may incur an obligation to provide transit services by virtue of a tariff or interconnection agreement, such an obligation would not alter the conclusion that there is no general requirement under the Act to provide transit services in the first instance.

CONCLUSION

The Commission should determine that carriers are under no obligation to provide indirect interconnection and transit services. The Commission also should establish that a carrier that agrees to provide indirect interconnection and transit services is not required to price those services at TELRIC. Finally, as discussed by SBC in its Comments, the Commission should establish mechanisms to ensure that (1) if a carrier provides transit service, no other carrier may frustrate the ability of the transit provider to be compensated for its services at the price it establishes for those services, and (2) the transit provider is not subject to inappropriate intercarrier compensation charges that should be paid by originating carriers to terminating carriers.

Respectfully submitted,

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